

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MICHELLE L. FARRA**

Claimant

VS.

**MERCY HOSPITAL**

Self-Insured Respondent

Docket No. 1,005,822

**ORDER**

Claimant requests review of the December 28, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

**ISSUES**

This claim originated with claimant's March 19, 2002 fall from a chair at work. It has been presented to four different administrative law judges and is now before the Board for the third time on appeal from a preliminary order. This appeal results from Judge Klein's finding that claimant's diagnosis of bipolar disorder is not related to her work injury and that there is no evidence that claimant's fall at work exacerbated the natural progression of her bipolar disorder.

Claimant alleges the ALJ exceeded his jurisdiction in ruling that claimant's bipolar disorder is not related to her injury at work because claimant's fall at work exacerbated her preexisting bipolar disorder.

Respondent argues that claimant's disability resulting from her bipolar disorder is not related to her work-related injury and that there is no evidence that claimant's fall on March 19, 2002, exacerbated the natural progression of her bipolar disorder. Accordingly, respondent requests that the Board affirm the ALJ's Order of December 28, 2005.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

In its prior Order dated March 2, 2005, the Board set out the following procedural history:

1. On December 19, 2003, claimant requested but was denied psychiatric/psychological treatment. The ALJ who heard this request justified his denial as follows:

The Court is at a complete loss to see how falling from a chair and landing on your buttocks with no documented physical findings of any severe injury could cause one to suffer psychiatric impairment. The Court must agree with the diagnosis of Dr. Hughes that the [c]laimant has malingered psychiatric complaints.<sup>1</sup>

2. That preliminary hearing Order was appealed to the Board and on May 27, 2004, the Board issued its Order and stated the following:

The Board finds it has the jurisdiction to review the issues of whether claimant has a psychiatric/psychological condition and, if so, whether it arose out of her employment. Based on the record compiled to date, the Board finds that claimant has a psychiatric condition that is directly traceable to her work-related injury.<sup>2</sup>

3. At that point, the only evidence bearing upon the pending issues were limited to an office note authored by Dr. Pandu Chillal, an internist, a report authored by Dr. Reddy, a psychiatrist, dated October 1, 2003, the report of Dr. Andrew Revelis, a physiatrist, and a report of Dr. Patrick Hughes, a psychiatrist.

4. Dr. Hughes, a physician retained by respondent to examine claimant, opined that claimant was suffering from a pain disorder with psychological features. He further concluded that her condition was not related to her work-related injury.

5. Dr. Revelis diagnosed claimant with bilateral sacroilitis, low back pain, myofacial pain with anxiety and depression and overlaying pain disorder. In his October 10, 2003 report Dr. Revelis found claimant to be [at] maximum medical improvement.

6. Claimant was also being treated by Dr. V.J. Reddy who had diagnosed claimant with a bipolar I disorder, mixed type with psychosis, a panic disorder and a general anxiety disorder. Dr. Reddy has opined that claimant's chronology of events "points toward her psychiatric symptoms being related to her

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<sup>1</sup> ALJ Order (Dec. 19, 2003).

<sup>2</sup> Board Order at 4, 2004 WL 1301715 (WCAB May 27, 2004).

injury sustained at work.”<sup>3</sup> Both he and Teri R. Sutherlin, claimant’s psychotherapist, disagree with the opinions expressed by Dr. Hughes.

7. On September 22, 2004, claimant again requested a preliminary hearing on the issue of continued psychiatric/psychological treatment with Dr. Reddy and Teri Sutherlin as well as the issue of temporary total disability (TTD) benefits. That matter was heard by Special Administrative Law Judge E.L. Kinch, on September 29, 2004. SALJ Kinch granted claimant’s request for TTD benefits from September 16, 2003 to October 1, 2003. He further ordered claimant to provide current records from Dr. Reddy (apparently for the purpose of determining whether claimant was entitled to ongoing TTD benefits) and directed the parties to agree upon a neutral psychologist to perform an IME and, in the event no agreement was reached, the SALJ would appoint a neutral himself.

8. On October 21, 2004, SALJ Kinch issued a supplemental order finding claimant was entitled to temporary total disability benefits beginning October 1, 2003. He also appointed Dr. John Chelf to serve as the independent medical examiner addressing the issues of diagnosis, causation, treatment and whether claimant was temporarily totally disabled, and if not, then an opinion as to the extent of her permanent partial disability, if any. Based upon the parties’ briefs, Dr. Chelf was a physician suggested by respondent’s counsel but agreed to by claimant’s counsel.

9. Dr. Chelf examined claimant on November 1, 2004. Not only did he personally examine claimant for a period of approximately 65 minutes, he reviewed claimant’s extensive medical history. His report itemizes all of the records provided to him, including those generated by claimant’s most recent hospitalization in September 2004 for self-mutilation.

10. According to Dr. Chelf, claimant’s “past psychiatric history begins about 1994 with a history of insomnia, inability to relax and feelings of frustration during a divorce.”<sup>4</sup> He further indicated she had a similar episode in May 2001, prior to the accident at issue in this claim.

11. Dr. Chelf diagnosed bipolar disorder, pain and panic disorder and a generalized anxiety disorder. While he concluded she was in need of additional psychiatric care, including medication and therapy, he stated that “[h]er condition began before her accident on March 19, 2002 *and has continued to worsen.*”<sup>5</sup> He

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<sup>3</sup> Motion Hearing Trans., Cl. Ex. 5 (Oct. 1, 2004 letter).

<sup>4</sup> *Id.*, Resp. Ex. 5 at 2 (Dr. Chelf’s Nov. 1, 2004 Psychological evaluation).

<sup>5</sup> *Id.* at 3.

further opined that she is temporarily totally disabled, but that her disability is not a result of events on March 19, 2002.<sup>6</sup>

12. Respondent's counsel contacted Dr. Chelf and asked him to clarify certain causation issues relating to claimant's condition. According to respondent's counsel, these questions were tailored to meet the evidentiary standards set forth in *Adamson*.<sup>7</sup> Dr. Chelf indicated that claimant's psychiatric or psychological diagnosis is *not* directly traceable to her physical injury symptoms or initial trauma nor is it a direct and natural consequence of that injury.<sup>8</sup> He further opined that her physical condition, as it relates to her accident, has not been increased or prolonged by her psychiatric or psychological condition. Moreover, he suggested that "[m]ore likely than not, she would be at or near the same point without regard to the March 19, 2002 accident."<sup>9</sup>

13. Dr. Kenneth Johnson diagnosed claimant with cervical and lumbar strain, mild degenerative disk and spine disease, and post-morbid<sup>10</sup> mood disorder with depression and/or anxiety.<sup>11</sup>

14. After receiving Dr. Chelf's supplemental report dated December 21, 2004, respondent filed a motion to terminate psychiatric or psychological medical treatment and TTD benefits. Respondent contends the opinions of Dr. Reddy on the issue of causation are compromised as he apparently did not know of claimant's pre-existing psychiatric or psychological condition. Instead, as demonstrated by the written reports authored by Dr. Chelf, respondent maintains claimant is not entitled to the treatment and TTD benefits she has been receiving as her psychiatric or psychological condition has not been impacted in any way as a result of the physical injury she sustained on March 19, 2002.

15. The ALJ denied respondent's motion and in doing so, stated as follows:

The [r]espondent's motion requesting the Administrative Law Judge to find that the accident did not arise out of and in the course of

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<sup>6</sup> *Id.*

<sup>7</sup> *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 546 (1994).

<sup>8</sup> Motion Hearing Trans., Resp. Ex. 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, Cl. Ex. 6. Dr. Johnson initially stated that her psychiatric condition was *premorbid* but in a letter dated June 17, 2003, he "apologized for the grave mistake" he made in his report. He concluded her mood disorder was *post-morbid* and was contributing to her difficulties with perceptions of pain. (*Id.*, Cl. Ex. 3)

<sup>11</sup> *Id.*

employment is overruled at this time. The Court will review the question of whether it arose out of and in the course of employment at the time the case is fully submitted. The Board has found that the accident did arise out of and in the course of employment and this Administrative Law Judge will not overrule that decision based upon a letter from a doctor.<sup>12</sup>

In its March 2, 2005 Order, the Board reversed the Order of the SALJ, finding the opinion of Dr. Chelf to be more persuasive than the opinions of Drs. Reddy and Hughes. The Order stated: "Based upon the evidence adduced *to date*, the Board is unpersuaded that claimant's psychiatric/psychological complaints arose out of her work related injury."<sup>13</sup>

The parties, then, took the depositions of Drs. Reddy and Chelf. Dr. Reddy first saw claimant on February 13, 2003, at which time he diagnosed her with major depression, generalized anxiety disorder and panic disorder with agoraphobia. This diagnosis was changed to bipolar one disorder, mixer type with psychosis, panic disorder and generalized anxiety disorder in September 2004, after claimant was hospitalized in a psychiatric unit. Dr. Reddy stated that claimant continues to need treatment to treat her psychiatric problems, has been unable to work since he first saw her in February 2003 and is unable to work at the present time. Dr. Reddy opined that claimant's present condition and inability to work are causally related to her injury in March 2002 because "[b]ased on the chronology, her symptoms have started since the injury. She had not exhibited historically any significant symptoms suggestive of the current diagnosis prior to that."<sup>14</sup> He also stated that if claimant had a significant preexisting condition, the work-related injury accelerated or enhanced that condition.

On cross-examination, Dr. Reddy was asked to comment on Dr. Chelf's opinions:

Q. And you have already told us you do not agree with paragraph three about the past psychiatric history and the interrelationship of that with her current problems as referenced by Dr. Chelf; correct?

A. That's correct.

Q. And specifically, when Dr. Chelf, . . . says her condition began before her accident on March 19, 2002 and has continued to worsen, you disagree with that opinion; correct?

A. That's correct.

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<sup>12</sup> ALJ Order (Jan. 3, 2005).

<sup>13</sup> Board Order at 6, 2005 WL 831911 (WCAB Mar. 2, 2005).

<sup>14</sup> Reddy Depo. at 21.

Q. And when he says her condition is not causally related to her fall from the chair, again, you disagree with that opinion; correct?

A. I have no opinion about that.

Q. All right, Now, if you look at number four, again Dr. Chelf indicates that she is temporarily totally disabled?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. It's his opinion that disability isn't a result of the events of March 19, 2002, and as I understand it, you disagree with that opinion?

A. I have no opinion about that.<sup>15</sup>

Respondent interprets this testimony as evidence that Dr. Reddy has no opinion on the causal relationship between the fall and the psychiatric condition or claimant's temporary total disability. The Board agrees.

Dr. Chelf testified concerning his review of claimant's records and his examination. He testified that claimant's condition was not related to her fall from a chair because "she was showing signs of her diagnosis, in terms of symptoms, that are very commonly present well before the date of the accident of March 19, going all the way back to 1994, possibly, and then again in 2001."<sup>16</sup> He testified that about 35 percent of people diagnosed with bipolar disorder have symptoms for up to 10 years prior to the diagnosis being made. Although in 1994 and 2001 claimant was diagnosed with situational reactive depression, Dr. Chelf testified:

The diagnosis at that time was based on the information that the doctor had in front of him. With information in this record, as well as the course of her illness, it's possible to look back at this record and realize that this was more than just a situational reactive depression at that time.<sup>17</sup>

Dr. Chelf also stated that claimant's work-related injury did not increase or prolong her psychiatric condition, stating:

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<sup>15</sup>*Id.* at 39-40.

<sup>16</sup>Chelf Depo. at 13.

<sup>17</sup>*Id.* at 30.

The illness was there and it has continued to be there and it has continued to progress. There is no evidence that the accident increased or prolonged her psychiatric condition. It's really felt that bipolar disorder is really a brain disorder that is—that actually is resulting from an ongoing brain injury and is not related to a physical injury or a stressful event. So that stressful event would not impact the course of that disease.<sup>18</sup>

Dr. Chelf further stated that he did not believe claimant was permanently disabled, stating she has a good chance of responding to appropriate treatment. He stated that Dr. Reddy had begun treating her with mood stabilizing medications that are appropriate for her bipolar disorder.

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.<sup>19</sup> A claimant must establish that his or her personal injury was caused by an “accident arising out of and in the course of employment.”<sup>20</sup> The phrase “arising out of” employment requires some causal connection between the injury and the employment.<sup>21</sup>

Dr. Reddy has apparently changed his position with regard to causation. He now has no opinion on whether claimant's accident at work on March 19, 2002, either caused or contributed to her current mental disorder and need for treatment. Dr. Chelf, on the other hand, clearly believes that claimant's work-related accident is unrelated to her bipolar disorder and that her psychiatric condition would be the same today regardless of the accident at work. The evidence has continued to develop during the litigation of this claim. Additional history and information has been established and presented to the expert witnesses and new expert witnesses have become involved. Regardless of whether or not Dr. Reddy actually changed his causation opinion during his deposition testimony, the greater weight of the expert opinion is now against the compensability of claimant's psychiatric disorder. Based upon the record compiled to date, the Board agrees with the ALJ that claimant's condition is not work related and her request for psychiatric treatment and temporary total disability compensation should be denied.

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<sup>18</sup>*Id.* at 20.

<sup>19</sup> K.S.A. 2005 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, Syl. ¶ 1, 826 P.2d 520 (1991).

<sup>20</sup> K.S.A. 2005 Supp. 44-501(a).

<sup>21</sup> *Pinkston v. Rice Motor Co.*, 180 Kan. 295, Syl. ¶ 4, 303 P.2d 197 (1956).

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>22</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Thomas Klein dated December 28, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2006.

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BOARD MEMBER

c: Patrick C. Smith, Attorney for Claimant  
Leigh C. Hudson, Attorney for Self-insured Respondent  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>22</sup> K.S.A. 44-534a(a)(2).